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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 25 1992

Federal Communications Commission
Office of the Secretary

In the Matter of)

THE TELEPHONE CONSUMER)
PROTECTION ACT OF 1991)

CC Docket No. 92-90

REPLY COMMENTS OF TANDY CORPORATION

Tandy Corporation ("Tandy"), by its attorneys and pursuant to the Commission's Notice of Proposed Rulemaking released April 17, 1992, respectfully submits its Reply in the above-captioned matter.¹

Through its more than 7,000 Radio Shack, Tandy Computer Center and other affiliated stores, Tandy is the world's largest retail distributor of consumer electronics products. Among the many electronic and computer products Tandy manufactures and sells are a variety of facsimile machine models. Since the instant proceeding is proposing new rules which would require facsimile machines manufactured on or after December 21, 1992 to mark specific identifying information on transmitted messages, Tandy has a significant interest in this proceeding.

Several commenting parties argue that Section 68.318(c)(4) of the proposed rules should be clarified. For example, Pacific Bell and Nevada Bell ("Pacific") argue that the provision should be clarified to recognize that the owners or operators of public use facsimile machines (located in stores or other public places) should not be liable for

¹ Notice of Proposed Rulemaking (FCC 92-176), CC Dkt. No. 92-90 (released Apr. 17, 1992) ("Notice").

ensuring compliance with the proposed technical requirements. Comments of Pacific at 6. Pacific also argues that common carriers over whose lines fax messages are sent should be immune from liability under The Telephone Consumer Protection Act ("TCPA"). *Id.* Bell Atlantic proposes specific language which would clarify that the rules relating to the "sender" of a facsimile message apply only to the party originating the message, not to the provider of a storage and forwarding service. Comments of Bell Atlantic at 4.

Tandy is similarly concerned that Section 68.318(c)(4) is not, in its current form, drafted precisely enough to effectuate the goals of the TCPA. Specifically, Tandy is concerned that the provision may be construed -- contrary to the legislative intent -- to hold manufacturers of facsimile machines responsible for ensuring that the required identifying information (*i.e.*, the date, time, identification and telephone number) be clearly marked on each transmitted page.

Section 68.318(c)(4) provides as follows:

Facsimile machines; identification of the sender of the message. It shall be unlawful for any person within the United States to use a computer or other electronic device to send any message via a telephone facsimile machine unless such message clearly contains, in a margin at the top or bottom of each transmitted page or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual. Facsimile machines manufactured on and after December 21, 1992 must clearly mark such identifying information on each transmitted page.²

² Notice at Appendix B, § 68.318(c)(4) (emphasis added).

The last sentence of the above provision, read literally, requires facsimile machines to "clearly mark" the requisite identifying information, regardless of whether the user of the facsimile machine misuses, intentionally or accidentally, the machine's capabilities by entering, for example, a false identification or telephone number of the sending machine. Similar language supporting this construction is contained in paragraph 20 ("require that any such machine which is manufactured after one year after the date of enactment of the Section clearly marks [required identifying information]") as well as paragraph 5 of the Notice ("[a]ny facsimile machine manufactured one year after the date of enactment must clearly mark this identifying information on the page").

Such ambiguous language, particularly the language contained in proposed Section 68.318(c)(4), raises the question as to whether a facsimile machine manufacturer may be held liable under circumstances where the user intentionally or inadvertently uses the machine's functions and capabilities to defeat the requirement that requisite identifying information be listed. Common sense dictates that all a manufacturer can do is equip a facsimile machine with the capability to include the required date, time, identification and telephone number information. If the user, once that user has purchased the machine and brought it to his or her home or business, decides to program inaccurate date, time, identification or telephone number information, the manufacturer should in no way be held responsible for this action.

Accordingly, it is Tandy's position that proposed Section 68.318(c)(4) should be clarified to only require facsimile machines manufactured on and after December 21, 1992 to provide the capability to clearly mark requisite identifying information on each

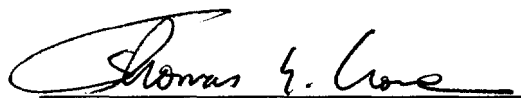
transmitted message. Tandy suggests the following addition to the last sentence of the subsection (added text is underlined):

Facsimile machines manufactured on and after December 21, 1992 must provide the capability to clearly mark such identifying information on each transmitted message.

The Commission should also expressly clarify that a manufacturer may not be held liable for a user's or operator's failure to accurately program a facsimile machine to include the required date, time, identification and telephone number information.

WHEREFORE, Tandy submits that proposed Section 68.318(c)(4) be clarified to only require facsimile machines manufactured on and after December 21, 1992 to provide the capability to clearly mark requisite identifying information on each transmitted page. Under no circumstances should a manufacturer of a facsimile machine be responsible for user or operator actions which cause the required identifying information to be inaccurately programmed.

Respectfully submitted,



John W. Pettit
Thomas K. Crowe

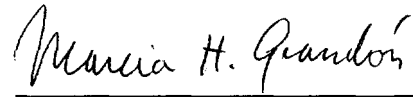
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June 25, 1992

Counsel for TANDY CORPORATION

CERTIFICATE OF SERVICE

I, Marcia H. Grandon, a secretary with the law firm of Hopkins & Sutter, hereby certify that copies of the foregoing "Reply Comments of Tandy Corporation" have been served this 25th day of June, 1992, by first class mail, postage prepaid, to all parties of record in this proceeding.


Marcia H. Grandon